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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 450

ARTHUR P. ALLEN, CHAIRMAN, TWELFTH REGION WAGE STABILIZATION BOARD, ET AL., APPELLANTS

v.

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION

STATEMENT AS TO JURISDICTION

The Acting Solicitor General, on behalf of the defendants-appellants, and in compliance with Rule 12 of the Supreme Court of the United States as amended, submits herewith a statement particularly disclosing the basis of the jurisdiction of the Supreme Court to review on appeal the judgment of permanent injunction entered by the District Court in this case.

OPINION BELOW

The opinion of the three-judge United States District Court for the Northern District of California, Southern Division, is not yet officially re-

ported. A copy of the opinion and of the findings of fact, conclusions of law and judgment are attached hereto as Appendix A.

JURISDICTION

The judgment of the three-judge District Court, specially convened pursuant to 28 U.S.C. 2282, was entered on July 31, 1953. The petition for appeal was presented to that court on September 24, 1953. The jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by 28 U.S.C. 1253 and 2101(b).

QUESTIONS PRESENTED

1. Whether the District Court erred in holding that the Defense Production Act of 1950 authorizes only the courts and not the President (or his delegee, the National Enforcement Commission) to disallow, for income tax computation and other purposes, wages paid by an employer in excess of applicable wage ceilings, despite the fact that Section 405(b) of the Act specifically empowers and directs the President "to prescribe the extent to which" such excessive wages "shall be disregarded by the executive departments * * * in determining the costs or expenses of any employer" for any purpose.

2. Whether the District Court erred in holding that issuance of a permanent injunction to restrain the administrative proceeding before the National Enforcement Commission was necessary to avoid irreparable injury to appellee.

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STATUTES INVOLVED

The pertinent provisions of the Defense Production Act of 1950 (64 Stat. 798, as amended, 50 U.S.C. 2061 *et seq.*) are set forth in Appendix B attached hereto.

STATEMENT

On November 4, 1952, the Wage Stabilization Board filed a complaint with the National Enforcement Commission against the Grand Central Aircraft Company, appellee here, asserting that the Company had made wage payments in 1951 in contravention of the wage freeze regulations prescribed by the Economic Stabilization Administrator. 16 F.R. 816.[1]

Appellee instituted the instant proceeding by filing a complaint on February 13, 1953, in the District Court for the Northern District of California, Southern Division, to restrain the regional and national officials of the Wage Stabilization Board and of the National Enforcement Commission from proceeding with the administrative hearing scheduled before Enforcement Commissioner Neal, one of the appellants here.

On February 17, 1953, the defendant officials moved to dismiss the complaint. Three weeks later, on March 11, a three-judge court was convened on appellee's application under 28 U.S.C.

[1] The background of the wage stabilization program under the Defense Production Act of 1950 is set forth in detail in our Statement as to Jurisdiction in *Jonco Aircraft Corporation* v. *Franklin, et al.*, docketed September 8, 1953, No. 323, Oct. T., 1953.

2282. That court then issued a temporary restraining order against Enforcement Commissioner Neal and against Norbach, Allen, Hernried, Nachman, and Smith, the five regional officials of the Wage Stabilization Board within the court's jurisdiction.[2] This was followed, on May 28, by an interlocutory injunction issued by the court against the same officials, enjoining them from proceeding with the administrative hearing during the pendency of the action.[3]

An answer to the complaint was filed by the defendant officials on June 12, 1953. The answer asserted that the case was moot as to defendants Allen, Hernried, Nachman, Smith, Killingsworth, Enarson, Lazarus, Ryder, Gregory, Humphrey, and Fuchs, all of whom had by that time left office. The answer also alleged that the court lacked jurisdiction because the Company had failed to exhaust its administrative remedies and had not made any showing of irreparable injury.

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[2] On April 2, 1953, the defendant officials moved to vacate the temporary restraining order, pointing out that appellee could suffer irreparable injury only if the administrative hearing culminated in issuance of a disallowance certificate. The motion to vacate also stated that if the administrative proceeding before the Enforcement Commissioner was allowed to continue, no certificate of disallowance would be issued by the National Enforcement Commission until two weeks after the Commission's final decision, which would have enabled appellee, during that two-week period, to seek any judicial remedies it might then desire. The District Court denied the motion on May 11, 1953.

[3] On June 15, 1953, this Court denied an application by defendants Norbach and Neal for a stay of the interlocutory injunction, with the Chief Justice and Mr. Justice Burton dissenting.

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On July 31, 1953, the three-judge court, after trial, decided (1) that the Defense Production Act of 1950 allows only the courts and not the President or the National Enforcement Commission to impose tax disallowances for illegal wage payments and (2) that appellee would be irreparably damaged by continuance of the administrative hearing before the National Enforcement Commission. A judgment permanently enjoining the proceeding scheduled for hearing by Enforcement Commissioner Neal was accordingly entered on the same date.

THE QUESTIONS ARE SUBSTANTIAL

The holding of the court below that the Defense Production Act does not authorize administrative determination and disallowance of excessive wage payments undermines the entire wage stabilization enforcement program, both as to past and pending proceedings. This three-judge decision, like that in the *Jonco Aircraft* case now on appeal before this Court,[4] jeopardizes the 2,000 administrative proceedings which have already resulted in tax disallowances by the National Enforcement Commission. In over 400 additional administrative proceedings, disallowances, stipulated or determined by the Commission, have not yet been certified. Approximately 100 other proceedings are also currently pending before the Commission or are in the process of administrative negotiation. In these additional cases, the estimated dollar amount is two million dollars.

[4] *Jonco Aircraft Corporation* v. *Franklin, et al.*, filed September 8, 1953, No. 323, Oct. T., 1953.

The decision below, branding as illegal the administrative proceedings upon which all of these past tax disallowances under the wage stabilization program were based, will, if allowed to stand uncorrected, inevitably result in thousands of tax refund claims and suits.[5] The decision, we submit, flies in the face of the plain language of Section 405(b) of the Defense Production Act, ignores the pertinent legislative history of that Act and the Stabilization Act of 1942, from which it was derived, and is in conflict with decisions of two courts of appeals recognizing the administrative power to determine and certify tax disallowances in wage overpayment cases. Moreover, we believe that the court below committed plain error in holding that appellee would be irreparably damaged by continuation of the administrative proceeding before the National Enforcement Commissioner. Its holding on this aspect of the case, conflicts squarely with the recent decision of another three-judge court dismissing a complaint filed by the appellee to enjoin a similar administrative proceeding instituted against it before the Commission by the Salary Stabilization Board. See *Grand Central Aircraft Company* v. *Jones, Enforcement Commissioner, et al.*, No. 15603, S. D. Cal., Central Div., decided August 31, 1953.

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[5] Applicable statutes of limitations on such claims and suits have not yet run as to most, if not all, of the administrative disallowances certified by the National Enforcement Commission under the 1950 Act.

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I

Section 405(b) of the Defense Production Act of 1950 Empowers the President To Certify and Impose Tax Disallowances

A. *The Terms of the Act*

Section 405(b) employs precise and unambiguous language in authorizing the tax disallowance sanction to be imposed administratively rather than by recourse to the courts. First, it prohibits payment by an employer and receipt by an employee of any wages in excess of the permissible ceilings. Then, in specific terms, it authorizes *the President* to direct the executive departments to disregard for tax computation and other purposes wages paid in violation of those ceilings:

> * * * The President shall also prescribe the extent to which any wage, salary, or compensation payment made in contravention of any such regulation or order shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation. * * *

The vesting of this power in the President, rather than in the courts, is, we submit, the short and conclusive answer to the suggestion of the court below that this power was lodged exclusively in the judiciary.

Other provisions of the Defense Production Act of 1950 confirm the view that Congress deliberately conferred this power on the President to be exercised administratively. Indeed, the thrust of the

entire Act was to arm *the President* with all authority necessary to combat inflation and maintain a stable economy. Thus Section 2 of the Act (50 U. S. C. App. 2061) expressly states that "It is the objective of this Act to provide *the President* with authority to accomplish" the purposes of the Act (emphasis supplied). Section 402(b)(1) of the Act (50 U. S. C. App. 2102(b)(1)) authorizes *the President* to impose ceilings on the price of commodities and services and also on wages and salaries. In imposing such ceilings, it is *the President* who is authorized by Congress to "make such adjustments as he deems necessary to prevent or correct hardships or inequities." Section 402(c), 50 U. S. C. App. 2102(c). In addition, Section 402 (f) empowers *the President* to exempt from wage control any type of employment for which he finds such control not necessary. 50 U. S. C. App. 2102 (f). We submit that this plenary power conferred on the President over wage control by the cited provisions of the Act attests to the fact that Congress meant what it said in Section 405(b) when it empowered the President, rather than the courts, not only to determine the extent of any wage ceiling violation but to direct the executive departments to disregard such overpayments for tax computation and other purposes.

No different result, despite the assertion of the court below, is warranted by Sections 706(a) and (b) of the Defense Production Act (Appendix B, *infra*). To the contrary, those provisions, to the extent here pertinent, furnish additional support

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for the view that Congress intended the tax disallowance sanction to be imposed administratively and not by the courts. Sections 706(a) and (b) confer jurisdiction on the District Courts over injunction suits to restrain violations of the Act and over criminal proceedings thereunder. Certainly, if Congress had also intended the tax disallowances to be imposed by the District Courts rather than administratively, Section 706 would have been the appropriate place in the Act for articulation of that intent. But not a syllable in the entire section refers to the tax disallowance sanction. And Section 405(b) itself, which establishes that sanction, far from authorizing its imposition judicially, expressly calls, as we have shown, for Presidential or administrative imposition.[6]

B. *Legislative History*

Pertinent legislative history materials further emphasize the error of the holding below that the disallowance sanction under Section 405(b) was to be imposed by the courts and not administratively.

1. Section 405(b) of the 1950 Act is derived

[6] Section 703(a) of the Defense Production Act (Appendix B, *infra*) authorizes the President "to delegate any power or authority conferred upon him by this Act to any officer or agency of the Government, including any new agency or agencies * * * and he may authorize such redelegations by that officer or agency as the President may deem appropriate." Accordingly, the delegation by the President of his tax disallowance power to the National Enforcement Commission through the Economic Stabilization Agency was in full conformity with Section 703(a). See Executive Order 10161, 15 F.R. 6105 (creating the Economic Stabilization Agency); General Order No. 18, 17 F.R. 6925, 9977 (creating the National Enforcement Commission).

from, and in all material respects, identical with Section 5(a) of the Stabilization Act of 1942, 50 U. S. C. App. 965(a), 56 Stat. 767. S. Rept. 2250, 81st Cong., 2d Sess., p. 39. From 1942 to 1947, the War Labor Board and later the National Wage Stabilization Board, acting under Section 5(a) of the 1942 Act, disposed of almost 100,000 wage violation cases, imposing disallowance sanctions in over 12,000 cases. In each of these cases, it was the Board, and not the courts, which made the finding of wage violation and determined the disallowance. See The National Wage Stabilization Board (January 1, 1946—February 24, 1947), pp. 230, 232-235; Termination Report, National War Labor Board (January 12, 1942—December 31, 1945), Vol. I, pp. 437-441.

Measured against this background, it is obvious that congressional enactment of Section 405(b) in 1950, using the identical language contained in Section 5(a), was intended to carry forward under the 1950 Act the same administrative enforcement procedure which had been the heart of the wage stabilization program under Section 5(a) of the 1942 Act. See *Commissioner* v. *Weisman*, 197 F. 2d 221, 223 (C. A. 1).[7]

2. The legislative history of the 1954 Supplemental Appropriation Bill (H. R. 6200, 83rd Cong., 1st Sess.) points to the same conclusion. It discloses full congressional awareness (1) that the tax

[7] See also H. Rept. 639, on H.R. 3871, 82d Cong., 1st Sess., at p. 40 (recognizing the "disallowance authority" of the President under Section 405(b) with respect to wage regulation violations.

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disallowance sanction provided by Section 405(b) was being imposed administratively through the National Enforcement Commission and (2) that the moneys sought for 1954 for the Economic Stabilization Agency were to be used to wind up and liquidate such administrative proceedings before the Commission. H. Doc. 176, 83d Cong., 1st Sess., p. 5; Hearings Before Subcommittee of House Committee on Appropriations on the 1954 Supplemental Appropriation Bill, H. R. 6200, 83dl Cong., 1st Sess., pp. 440-442; Hearings Before the Senate Committee on Appropriations on the Supplemental Appropriation Hill, H. R. 6200, 83rd Cong., 1st Sess., pp. 424, 430, 431; Conference Report (H. Rept. No. 1090) on H. R. 6200, 83rd Cong., 1st Sess., Amendment No. 76, 99 Cong. Rec. 11219. Apart from all other considerations, congressional enactment of H. R. 6200 into Public Law 207 on August 7, 1953, specially appropriating, in Chapter XI, funds "for liquidation of the Economic Stabilization Agency" for the fiscal year ending June 30, 1954, constitutes, we submit, an acceptance and ratification by Congress of the use of the administrative proceeding to enforce the tax disallowance sanction. See *Fleming* v. *Mohawk Co.*, 331 U. S. 111; *Brooks* v. *Dewar*, 313 U. S. 354.

3. The legislative history of the 1954 Supplemental Appropriation Bill is also important because it discloses the concession by counsel for appellee before the Senate Appropriations Committee as to the propriety of the very administrative proceeding enjoined by the court below. In July

1953, counsel for appellee urged the Committee to refuse to appropriate funds for liquidation of the wage stabilization program and argued that such funds should not be allocated for use by the National Enforcement Commission of the Economic Stabilization Agency for administrative proceedings initated before the Commission after April 30, 1953.[8] Such a proceeding had in fact been instituted on May 5, 1953, against appellee before the Commission by the Salary Stabilization Board.[9] An earlier and entirely distinct proceeding—the one enjoined by the court below and involved here—had been instituted against appellee before the Commission by the Wage Stabilization Board on November 4, 1952, several months in advance of the allegedly critical cut-off date of April 30, 1953. The colloquy between Mr. Holland, counsel for appellee, and Senator Cordon, Chairman of the Senate Appropriations Committee, shows that on July 23, 1953, counsel, while challenging the later salary proceeding filed after April 30, 1953, fully recognized that the first administrative proceeding in-

[8] April 30, 1953, is the termination date for "all authority conferred" on agencies such as the National Enforcement Commission and its parent organization, the Economic Stabilization Agency. Section 717(a) of the Defense Production Act of 1950, 50 U.S.C. App. 2166(a), as amended by Section 121(b) of the Act of June 30, 1952, 66 Stat. 306. But Section 717(b)(3) of the 1950 Act specifically authorizes such agencies to "continue in existence for purposes of liquidation" for an additional six months, *i.e.*, until October 31, 1953. 50 U.S.C. App. 2166(b)(3), 65 Stat. 110.

[9] Appellee's attempt to enjoin this administrative proceeding was unsuccessful. *Grand Central Aircraft Company* v. *Jones, Enforcement Commission, et al.*, No. 15603, S.D. Cal., Central Div., decided August 31, 1953.

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stituted before the National Enforcement Commission by the Wage Stabilization Board was "all right":

> Mr. HOLLAND. * * *
>
> We are involved in an enforcement proceeding before the Economic Stabilization Agency. That proceeding started with the complaint filed last November in a wage case and a salary complaint which was filed this last May.
>
> The problem that we have with this appropriation—
>
> Senator CORDON. You do not question but what it was all right for the Economic Stabilization Agency at that time to inquire into the particular matter, do you?
>
> Mr. HOLLAND. Yes, sir.
>
> *The first one is all right;* the second one came during what is the liquidation period. And we do not believe it was appropriate for the Agency to start new cases. Our idea of liquidation would certainly be limited to the cases they had. [Hearings Before the Senate Committee on Appropriations, on the 1954 Supplemental Appropriation Bill, H. R. 6200, 83d Cong., 1st Sess., at p. 427 (emphasis supplied).]

C. *Decisions of Other Courts*

Several decisions under the 1942 Act recognized that the tax disallowance power was to be exercised administratively. Thus, in *Troy Laundry Co.* v. *Wirtz*, 155 F. 2d 53, 55 (C. A. 9), certiorari denied, 329 U. S. 723, the court declared it "obvious that it

was within the executive power of the President to inquire and determine the extent of appellant's wage overpayments, if any." See also *De La Rama S. S. Co.* v. *Pierson*, 174 F. 2d 84 (C. A. 9). The legality of the use of administrative procedure under Section 5(a) has also been upheld in two recent cases. *N. A. Woodworth Co.* v. *Kavanagh*, 102 F. Supp. 9 (E. D. Mich., 1952), affirmed "for the reasons and on the grounds stated in the opinion of the District Court," 202 F. 2d 154 (C. A. 6); *Weather-Seal Mfg. Co.* v. *Commissioner*, 16 T. C. 1312, affirmed, 199 F. 2d 376 (C. A. 6). While these cases involved the 1942 Act, they necessarily sustain the validity of proceeding administratively under the identical provisions of Section 405(b) of the 1950 Act.

II

The Court Below Erred In Finding That Appellee Would Suffer Irreparable Injury

A clear showing of irreparable injury is, of course, crucial to the exercise of the equity jurisdiction which was here involved. The court below found such irreparable injury only because of an "overhanging threat of the disallowance penalties," which would cause the banks to withdraw credit extended to appellee and force it into bankruptcy. But any such "threat," if made by the defendant officials enjoined below, was an empty one and could not therefore serve as a proper basis for a finding of irreparable injury. The defendant officials enjoined below—the regional officers of the Wage Stabilization Board and National Enforce-

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ment Commission—were not empowered to assess any tax disallowance sanction or any other penalty. The defendant Enforcement Commissioner Neal is not authorized to issue any certificate of disallowance. He can do not more than issue a purely advisory opinion to the National Enforcement Commission. His recommendation, having none of the earmarks of finality or conclusiveness, no more affects the Company's credit standing than does the actual filing of the complaint by the Wage Stabilization Board before the National Enforcement Commission.

It is only the Commission in Washington which has the power to reach a final decision and to certify disallowances. General Procedure Regulation No. 1, Rev., 17 F. R. 7740. And, as conceded by appellee, the "defendants [in this case] do not include the National Enforcement Commission or its members." See page 6 of Objections of Respondent to Application for a Stay of Interlocutory Injunction, filed in this Court in *Norbach, et al. v. Grand Central Aircraft Co.*, June 15, 1953. See footnote 3, *supra*. Since the only officers who are in a position to impose the disallowance penalties are not parties to the proceeding, we submit that the court committed plain error in finding that the "threat" of these penalties exposed appellee to irreparable injury.

This error of the court below in its finding of irreparable injury is highlighted by the direct conflict between that finding and the recent decision of a differently-constituted three-judge court in

another case involving the same company and involving identical allegations of irreparable injury. *Grand Central Aircraft Co.* v. *Jones, Enforcement Commission, et al.*, No. 15603, S. D. Cal., Central Div.

In this latter case, appellee sought an injunction to restrain an administrative proceeding filed against it before the National Enforcement Commission by the Salary Stabilization Board. An affidavit filed in support of the claim of irreparable injury was in all respects the same as that filed in the court below in the instant case involving the Wage Stabilization Board. Indeed, the only difference between the two affidavits was reflected in amounts asserted by the two Boards to have been paid by appellee in contravention of the stabilization regulations. As stated by appellee:

> In the Allen suit [i.e., the instant case], the claimed illegal wages, according to the WSB, amounted to $5,561,484. In the [Jones] suit, the claimed illegal salaries, according to the office of Salary Stabilization, amounted to $8,000,000.[10]

Thus, the maximum tax disallowance penalty in the *Jones* or Salary Stabilization case was considerably in excess of that involved in the instant suit. Nevertheless, the three-judge court in the *Jones* case rejected the argument that continuation of the Salary Stabilization proceeding before the National

[10] Plaintiff's Supplemental Memorandum in Support of Application for Interlocutory Injunction, p. 4, filed in the District Court in the *Jones* case.

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Enforcement Commission would work irreparable injury to appellee. And in dismissing appellee's complaint for injunctive relief in the *Jones* suit, the three-judge court held that the asserted irreparable injury,

> * * * is not the sort of irreparable injury against which equity protects." [*Petroleum Expl., Inc.* v. *Public Serve. Comm'n.*, 304 U.S. 209, 220-221 (1938); cf. *Myers* v. *Bethlehem Shipbuilding Corp., supra*, 303 U.S. at 51-52; *Beal* v. *Missouri Pac. R. Co.*, 312 U.S. 45, 49-50 (1941)];
>
> that in all events plaintiff, [i.e., *Grand Central Aircraft Company*] has "a full, adequate and completely available remedy at law." [see *Aircraft & Diesel Equip. Corp.* v. *Hirsch, supra*, 331 U.S. at 774-781; *Coffman* v. *Breeze Corps.*, 323 U.S. 316, 322-323 (1945); *Fed. Trade Com.* v. *Claire Furn. Co.*, 274 U.S. 160, 174-175 (1927); *Dalton Machine Co.* v. *Virginia*, 236 U.S. 699, 701 (1915); *cf. Cruikshank* v. *Bidwell*, 176 U.S. 73, 81-82 (1900)], in the federal courts [*Petroleum Expl. Inc.* v. *Pub. Serv. Comm'n., supra*, 304 U. S. at 217; *cf. Hynes* v. *Grimes Packing Co.*, 337 U.S. 86, 98-99 (1949)]; and
>
> that since plaintiff [i.e., *Grand Central Aircraft Company*] has failed, for the reasons mentioned, to state a claim within the equitable jurisdiction of the court [*Matthews* v. *Rodgers*, 284 U.S. 521, 524-525 (1932); *Twist* v. *Prairie Oil & Gas Co.*, 274 U.S. 684, 689-691 (1927)], "and the defect in the bill is incapable of remedy by amendment, its dismissal should

be directed" [*Myers* v. *Bethlehem Shipbuilding Corp., supra,* 303 U.S. at 42-53; *Mast. Foos & Co.* v. *Stover Mfg. Co.,* 177 U.S. 485, 494-495 (1900)]. [Order by Three-Judge Court (Circuit Judge Stephens and District Judges Mathes and Carter) on Plaintiff's Application for Preliminary Injunction and Defendant's Motion to Dismiss, filed in *Jones* case, on August 31, 1953.]

That holding, we submit is correct and is the dispositive answer to the irreparable injury argument put forth in the instant case.

CONCLUSION

For the reasons stated, the judgment of permanent injunction entered by the court below should be reversed.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

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APPENDIX A

OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

No. 32541

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION, PLAINTIFF

vs.

ARTHUR P. ALLEN, CHAIRMAN, TWELFTH REGION WAGE STABILIZATION BOARD; RUDOLPH F. HERNRIED, MEMBER TWELFTH REGION WAGE STABILIZATION BOARD; ERNEST A. NORBACH, TWELFTH REGION COUNCIL, JOSEPH I. NACHMAN, CHIEF OF RULINGS AND OPINIONS AND BRANCH TWELFTH REGION WAGE STABILIZATION BOARD; JEROME SMITH, CHIEF ENFORCEMENT ATTORNEY, TWELFTH REGION WAGE STABILIZATION BOARD; CHARLES C. KILLINGSWORTH, CHAIRMAN WAGE STABILIZATION COMMITTEE; H. L. ENARSON, HERMAN LAZARUS AND MEYER S. RYDER, MEMBERS OF WAGE STABILIZATION COMMITTEE; PHIL C. NEAL, ENFORCEMENT COMMISSIONER; CHARLES O. GREGORY, CHAIRMAN NATIONAL ENFORCEMENT COMMISSION; HELEN F. HUMPHREY, RALPH F. FUCHS, AND LAWSON F. BERNSTEIN, MEMBERS OF NATIONAL ENFORCEMENT COMMISSION; ISAAC GRONER, CHIEF COUNSEL FOR WAGE STABILIZATION COMMITTEE; DOE ONE, DOE TWO, DOE THREE, DOE FOUR, DOE FIVE AND DOE SIX, DEFENDANTS

1. Opinion

(Mathews, United States Circuit Judge; Goodman, United States District Judge; and Friedman, United States District Judge.)

FRIEDMAN, United States District Judge:

This is an action to enjoin officials of the Wage Stabilization Board and of the National Enforcement Commission from continuing administrative proceedings against Grand Central Aircraft Company in Case No. 12-122 now pending before the Commission. The charges brought by the Wage Stabilization Board in a Complaint filed on November 4, 1953, allege violations of Sec. 405(b) of the Defense Production Act of 1950, as amended, (50 U.S.C. App. 2105(b)) and of regulations and orders issued thereunder. Specifically, the Board alleged that Grand Central Aircraft Company had made wage payments to its employees in 1951 in contravention of General Wage Stabilization Regulation 1, popularly known as "the wage freeze", promulgated by the Economic Stabilization Administrator. A hearing on the allegations of that Complaint was set for February 24, 1953, before Enforcement Commissioner Phil C. Neale, at Los Angeles, California. On February 13, 1953, the company filed its Complaint in the District Court for the Northern District of California, Southern Division, against regional and national officials of the Wage Stabilization Board and of the National Enforcement Commission to enjoin them from proceeding with the administrative hearing. The administrative hearing was then postponed, pending judicial action. On February 17, 1953, the defendant officials moved to dismiss the Complaint. On March 11, 1953, a Three-Judge Court was appointed, pursuant to 28 U.S.C. 2282; and after a hearing on March 20, 1953, the Court issued a Temporary Restraining Order directed against the regional offi-

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cials who were within the Court's jurisdiction and took under advisement the company's motion for a preliminary injunction and the defendant's motion to dismiss the Complaint. On April 2, 1953, the defendants filed a motion to vacate the Temporary Restraining Order; the Three-judge Court heard argument on that motion and took the matter under advisement on May 1, 1953. On May 11, 1953, the Court issued a Memorandum Order for Interlocutory Injunction, finding that there were grave and important questions of law and fact to be determined on trial, and that if an Interlocutory Injunction were not granted, the company would suffer irreparable damage and ordered that an Interlocutory Injunction issue. On May 28, 1953, the Court issued the Interlocutory Injunction enjoining the regional officials of the Wage Stabilization Board and the Enforcement Commissioner from proceeding with the administrative proceedings upon condition that plaintiff post bond in the sum of One Thousand ($1,000.00) Dollars for the payment of costs and damages, should it develop that any party was wrongfully enjoined. (The Court reserved decision on the motion to dismiss the Complaint.)

The Acting Solicitor General of the United States applied to the Supreme Court on June 5, 1953, for a stay of the Interlocutory Injunction granted by this Court; the Supreme Court denied the application on June 15, 1953. The case came on for trial before this Court on July 24, 1953, and was submitted that day.

The undisputed evidence convincingly showed that the plaintiff would be irreparably damaged by the continuance of the administrative proceedings.

The plaintiff is engaged in the reconditioning of aircraft engines and equipment. It employs several thousand employees. Its plants are located in Southern California and Arizona. Over seventy-five per cent of its production is for defense purposes arising out of government contracts. During the course of the administrative proceedings, plaintiff was advised in writing by the representatives of the Enforcement Commission that it proposed to assess penalties by way of a recommendation of disallowance of deductions for tax purposes, if the evidence showed violation of the statute and regulations, in maximum amounts of from Two to Three Million Dollars. The testimony showed that the plaintiff had established a credit of Six Million Dollars with a group of Los Angeles banks and that its current borrowings were in excess of One Million Dollars. The evidence further showed that the continuance of the administrative proceedings with the over-hanging threat of the disallowance penalties would cause the banks to withdraw the credit extended, resulting in a shut down of plaintiff's business, concellation of its government contracts, and consequent bankruptcy. Without more, the evidence is persuasive as to irreparable damage.

Plaintiff urges several grounds which it claims legally justify the issuance of a permanent injunction, among them asserted Constitution infirmities in the Defense Production Act of 1950. Since we are of the opinion that the cause can be justly decided without resolving the tendered Constitutional questions, we do not reach them.[11]

[11] It has long been an established legal policy that Courts should not unnecessarily determine Constitutional issues. Hurd v. Hodge, 334 U.S. 24, 30, 68 S. Ct. 847, 92 L. Ed. 1187;

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Other substantial grounds are urged to support the judgment in favor of plaintiff: That (1) the savings clause in the general statute clause in the general statute (1 U.S.C. 109) does not cover this administrative proceeding; that (2) this is not a suit, action, or prosecution under the savings clause of the Defense Production Act of 1950 (50 U.S.C. App. 2156(b)); and that (3) the provisions for the termination of the Act provide only for a continued existence for a period not to exceed six months for purposes of liquidation, and that this administrative proceeding is not part of the liquidation. (50 U.S.C. App. 2166(b)(3).) These contentions appear to have substantial merit, but we do not find it necessary to pass upon them.

It is sufficient to say that we are unable to perceive in the Defense Production Act any authority for the imposition of penalties by the National Enforcement Commission. To the contrary, the statute vests jurisdiction in the District Courts of the United States of all actions under the Act to enforce any liability or duty created thereby. (50 U.S.C.

Rescue Army v. Municipal Court, 1947, 331 U.S. 549, at Page 569, 67 S. Ct. 1409, 91 L. Ed. 1666; Alma Motor Co. v. Timkin-Detroit Axle Co., 1946, 329 U.S. 129, 136, 67 S. Ct. 231, 91 L. Ed. 128; Arkansas Fuel Co. v. State of Louisiana ex rel. Muslow, 1938, 304 U.S. 197, 202, 58 S. Ct. 852, 82 L. Ed. 1287; Baker v. Grice, 1898, 169 U.S. 292, 18 S. Ct. 323, 42 L. Ed. 748. There would appear to be no good reason why this doctrine should not apply to courts constituted as this one is. See Morgan v. U.S. 107 F. Supp. 501, at 504, and also United Air Lines, Inc. v. Public Utilities Commission, 109 F. Supp. 13.

This Three-judge Court, having properly acquired jurisdiction, has power to pass upon non-constitutional questions involved in the suit. Louisville & Nashville Railroad Co. v. Garrett, 231 U.S. 298; Firemen's Ins. Co. v. Beha D.C., 30 F. 2d 539; United Air Lines, Inc. v. Public Utilities Commission, supra.

App. 2156(b)) It is true that the Act authorizes the President to prescribe the *extent* to which any unauthorized payment made by an employer to an employee may be disregarded by Executive Departments (such as the Treasury) in determining gain for tax purposes. (50 U.S.C. App. 2105(a)) But the statute nowhere vests in the President or in any delegated agency the power to actually impose penalties.

We unanimously conclude that a judgment for a permanent injunction as prayed should enter herein. See Jones Aircraft Corporation v. Franklin, et al., No. 5122, District Court, Northern District of Texas, decided July 15, 1953, not yet reported.

Dated: July 31, 1953.

(S.) MONROE M. FRIEDMAN,
United States District Judge.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial before the above entitled Court on July 24, 1953. Parties hereto appearing by their respective counsel, and the Court having heard evidence, and the testimony of witnesses and the arguments of counsel, and briefs having been submitted.

Now Therefore, upon due consideration, the Court makes the following:

FINDINGS OF FACT

1. The allegations of Paragraphs II, III, V, VI, VIII, IX, X, XI, and XII of plaintiff's Complaint are true.

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2. Prosecution of the Complaint issued by the Wage Stabilization Board will cause irreparable damage to the plaintiff for the reasons stated in Paragraph XV of plaintiff's Complaint. The Court further finds that the continuance of the threatened administrative proceeding will cause plaintiff's bank credit to be shut off and will disable plaintiff from continuing its operations.

Conclusions of Law

The Court finds that there is no statutory authority for the imposition of penalties by the National Enforcement Commission and the threat of such enforcement will cause irreparable damage to the plaintiff and, therefore, a permanent injunction should be granted restraining the defendants from further prosecution of the proceeding against plaintiff in Case No. 12-122 now pending before the National Enforcement Commission with respect to any alleged violations of the Defense Production Act of 1950, as originally enacted and as amended, or of any regulations or orders issued pursuant thereto.

Let a permanent injunction issue forthwith.

Dated: July 31, 1953.

(S.) Clifton Mathews,
United States Circuit Judge.
(S.) Louis E. Goodman,
United States District Judge.
(S.) Monroe M. Friedman,
United States District Judge.

Endorsed: Filed 4:30 P. M., July 31, 1953, C. W. Calbreath, Clerk.

3. Judgment of Permanent Injunction

The petition of plaintiff for permanent injunction came on regularly to be heard on July 24, 1953, before the above entitled District Court, consisting of the Honorable Clifton Mathews, United States Circuit Judge, the Honorable Louis E. Goodman, United States District Judge, and the Honorable Monroe M. Friedman, United States District Judge.

All parties appeared by counsel, and the Court heard the evidence and the arguments of counsel, and briefs were filed by the parties; the matter was submitted to the Court for its decision.

Upon due consideration thereof, it appears to the Court, for the reasons stated in the Opinion filed, that petitioner should be granted the relief prayed for in its petition. Findings of Fact and Conclusions of Law have heretofore been filed.

It Is Hereby Ordered, Adjudged and Decreed that the defendants, Arthur P. Allen, Chairman, Twelfth Region Wage Stabilization Board, Rudolph Hernried, Member Twelfth Region Wage Stabilization Board, Ernest A. Norbach, Twelfth Region Counsel, Joseph I. Nachman, Chief of Rulings and Opinions Branch Twelfth Region Wage Stazilization Board, Jerome Smith, Chief Enforcement Attorney, Twelfth Region Wage Stabilization Board, and Phil C. Neal, Enforcement Commissioner, and each of said defendants, and their agents, servants, attorneys and successors in office are hereby permanently restrained and enjoined from prosecuting, hearing any charges brought against, or otherwise proceeding against plaintiff in Case No. 12-122 now pending before the said

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National Enforcement Commission or with respect to any alleged violations of the Defense Production Act of 1950, as originally enacted and as amended, or of any regulations or orders issued pursuant thereto.

Dated: July 31, 1953.

(S.) CLIFTON MATHEWS,
United States Circuit Judge.
(S.) LOUIS E. GOODMAN,
United States District Judge.
(S.) MONROE M. FRIEDMAN,
United States District Judge.

Endorsed: Filed 4:30 P. M. July 31, 1953, C. W. Calbreath, Clerk.

APPENDIX B

PERTINENT SECTIONS OF THE DEFENSE PRODUCTION ACT OF 1950

The Defense Production Act of 1950 (64 Stat. 798, as amended, 50 U. S. C. App. 2061 *et seq.*) provides in pertinent part:

> Section 405. (a) It shall be unlawful, regardless of any obligation heretofore or hereafter entered into, for any person to sell or deliver, or in the regular course of business or trade to buy or receive, any material or service, or otherwise to do or omit to do any act, in violation of this title or of any regulation, order, or requirement issued thereunder, or to offer, solicit, attempt or agree to do any of the foregoing. The President shall also prescribe the extent to which any payment made, either in money or property, by any person in viola-

tion of any such regulation, order, or requirement shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any such person for the purposes of any other law or regulation, including bases in determining gain for tax purposes.

(b) No employer shall pay, and no employee shall receive, any wage, salary, or other compensation in contravention of any regulation or order promulgated by the President under this title. The President shall also prescribe the extent to which any wage, salary, or compensation payment made in contravention of any such regulation or order shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

Section 703. (a) Except as otherwise specifically provided, the President may delegate any power or authority conferred upon him by this Act to any officer or agency of the Government, including any new agency or agencies (and the President is authorized to create such new agencies, other than corporate agencies, as he deems necessary) and he may authorize such redelegations by that officer or agency as the President may deem appropriate. The President is authorized to appoint heads and assistant heads of any such new agencies, and other officials therein of comparable status, and to fix their compensation, without regard to the Classification Act of 1949, as amended, the head of one such agency to be paid at a

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rate comparable to the compensation paid to the heads of executive departments of the Government, and other such heads, assistant heads, and officials at rates comparable to the compensation paid to the heads and assistant heads of independent agencies of the Government. Any officer or agency may employ civilian personnel for duty in the United States, including the District of Columbia, or elsewhere, without regard to section 14 of the Federal Employees Pay Act of 1946 (60 Stat. 219), as the President deems necessary to carry out the provisions of this Act.

(b) The head and assistant heads of any independent agency created to administer the authority conferred by title IV of this Act shall be appointed by the President, by and with the advice and consent of the Senate. There shall be included among the policy-making officers of each regional office administering the authority conferred by title IV of this Act a resident of each State served by such office whose governor requests such representation.

Section 706. (a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or tempo-

rary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act or any rule, regulation, order, or subpena thereunder, and of all civil actions under this Act to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpena thereunder. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; the subpena for witnesses who are required to attend a court in any district in such case may run into any other district. The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. No costs shall be assessed against the United

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States in any proceeding under this Act. All litigation arising under this Act or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General.

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